

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alyssa Rogowski	Team: Squad #14	CCRB Case #: 201903360	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 04/18/2019 5:00 AM, Thursday, 04/18/2019 5:00 AM	Location of Incident: [REDACTED]	Precinct: 70	18 Mo. SOL 10/18/2020	EO SOL 6/4/2021	
Date/Time CV Reported Thu, 04/18/2019 3:56 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 04/18/2019 3:56 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Frank Fiorenza	18475	957588	070 PCT
2. POM Desean Mullings	19483	959833	070 PCT
3. LT Yael Magori	00000	942099	070 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Yousef Abdalla	14556	961589	070 PCT
2. POF Justine Ezeir	15570	960513	070 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Frank Fiorenza	Abuse: In front of § 87(2)(b) in Brooklyn, Police Officer Frank Fiorenza searched the vehicle in which § 87(2)(b) was an occupant.	[REDACTED]
B.LT Yael Magori	Abuse: In front of § 87(2)(b) in Brooklyn, Lieutenant Yael Magori searched the vehicle in which § 87(2)(b) was an occupant.	[REDACTED]
C.POM Desean Mullings	Abuse: In front of § 87(2)(b) in Brooklyn, Police Officer Desean Mullings threatened § 87(2)(b) with the use of force.	[REDACTED]
D.LT Yael Magori	Abuse: In front of § 87(2)(b) in Brooklyn, Lieutenant Yael Magori seized § 87(2)(b)'s property.	[REDACTED]
E.POM Frank Fiorenza	Force: At the 70th Precinct stationhouse, Police Officer Frank Fiorenza used a chokehold against § 87(2)(b) [REDACTED]	[REDACTED]

### Case Summary

On April 18<sup>th</sup>, 2019, § 87(2)(b) filed this complaint via call to the CCRB's Intake Unit.

On April 18<sup>th</sup>, 2019 at around 5:00am, § 87(2)(b) was asleep in his parked car in front of § 87(2)(b) in Brooklyn. Police Officer Frank Fiorenza, Police Officer Justine Ezeir, Police Officer Yousef Abdalla, Police Officer Desean Mullings, Police Officer Marika Williams, and Lieutenant Yael Magori, all of the 70<sup>th</sup> Precinct, approached § 87(2)(b)'s vehicle and PO Fiorenza requested § 87(2)(b)'s license and registration. After reviewing the paperwork, the officers stated that § 87(2)(b)'s license plates were not valid and PO Fiorenza instructed § 87(2)(b) to give him the keys. § 87(2)(b) dangled his keys just inside of the vehicle and PO Fiorenza reached through the window and grabbed the keys (**Allegation A: Abuse of Authority**, § 87(2)(g)). PO Fiorenza then ordered § 87(2)(b) to step out of the vehicle. § 87(2)(b) exited his vehicle and was handcuffed, then PO Ezeir, PO Abdalla, and Lieutenant Magori searched § 87(2)(b)'s vehicle (**Allegation B: Abuse of Authority**, § 87(2)(g)). After a few minutes, officers walked § 87(2)(b) to a police vehicle for transport. While walking towards the police vehicle, § 87(2)(b) kicked his own car door and PO Mullings allegedly stated, "If you do that one more time, I'm gonna drop you on your face" (**Allegation C: Abuse of Authority**, § 87(2)(g)). Officers then seized § 87(2)(b)'s vehicle and drove it to the 70<sup>th</sup> Precinct stationhouse (**Allegation D: Abuse of Authority**, § 87(2)(g)).

PO Fiorenza and PO Ezeir transported § 87(2)(b) to the 70<sup>th</sup> Precinct stationhouse, where PO Fiorenza allegedly grabbed the front of § 87(2)(b)'s neck (**Allegation E: Force**, § 87(2)(b)).

§ 87(2)(b) was arrested for § 87(2)(b) [redacted]  
[redacted] (Board Review 02). § 87(2)(b)'s next court appearance is scheduled for § 87(2)(b) § 87(2)(b) § 87(2)(b).

The investigation obtained six body-worn camera videos from six officers involved in this incident (Board Reviews 03-08) and surveillance footage from the 70<sup>th</sup> Precinct stationhouse (Board Review 12).

### Findings and Recommendations

**Allegation A—Abuse of Authority: In front of § 87(2)(b) in Brooklyn, Police Officer Frank Fiorenza searched the vehicle in which Alexander § 87(2)(b) was an occupant.**  
**Allegation B—Abuse of Authority: In front of § 87(2)(b) in Brooklyn, Lieutenant Yael Magori searched the vehicle in which Alexander § 87(2)(b) was an occupant.**

Body-worn camera footage was received from six officers involved in this incident. PO Fiorenza's BWC shows that he approaches the driver's side of § 87(2)(b)'s vehicle and knocks on the driver's window. PO Fiorenza asks for § 87(2)(b)'s license and registration, then states that the reason § 87(2)(b) is being stopped is because he has been parked in a no standing any time zone for three minutes and because his license plate was obscured and there was something wrong with the plate (Board Review 03, 1:03 – 2:19).

Between 2:20 – 2:36 in PO Fiorenza's BWC, PO Fiorenza and PO Abdalla request that § 87(2)(b) hand over his keys and § 87(2)(b) dangles his keys in view of the officers just inside his vehicle. After making multiple requests for § 87(2)(b) to hand over the keys, PO Fiorenza reaches through the window and grabs the keys.

Between 2:37—3:12 in PO Fiorenza's BWC, PO Fiorenza and PO Abdalla make multiple requests for § 87(2)(b) to exit his vehicle. Between 3:56 - 4:40, § 87(2)(b) goes to the rear of his vehicle and PO Fiorenza states, "You're getting locked up, the plate is fake."

Between 4:40 – 5:10, PO Fiorenza puts handcuffs on § 87(2)(b). After § 87(2)(b) is handcuffed, PO Fiorenza frisks and searches § 87(2)(b).

Between 4:43-4:55 in PO Fiorenza's BWC, PO Ezeir is standing behind PO Abdalla in the open driver's side door. She appears to look down at the open door and shines her flashlight into the door pocket. She reaches down and pulls a flat object out of the door pocket. She examines it with her flashlight. From 5:24 - 5:37 in PO Fiorenza's BWC, PO Ezeir states, "Anyways, you have marijuana in plain view," and it can be seen that the object she is holding is a ziplock bag containing a vegetative green substance.

At 5:56, in PO Abdalla's BWC, § 87(2)(b) asks PO Abdalla to get his title out of the glove box. PO Abdalla enters the car and tries to open first the center console, then § 87(2)(b) explains in the glove compartment on the passenger side (Board Review 04, 6:19-7:40). As captured in her BWC, Lieutenant Magori also enters from the passenger side to help PO Abdalla get the title (Board Review 07, 6:47-7:47). This is the extent of the vehicle search that occurs on scene.

Because the allegation and its context was clearly captured on BWC, the investigation did not interview officers about this allegation.

The narrative on § 87(2)(b)'s arrest report from this incident states, "At TPO, A/O observed § 87(2)(b) idling at above location for more than three minutes. Upon further investigation, § 87(2)(b) dealer plate could not be found in § 87(2)(b) DMB or New York DMV. SILA marijuana found in driver side door." (Board Review 02).

§ 87(2)(b) stated that when the officers approached him, they informed him that he was parked in a no-standing zone and that his vehicle's license plates were not valid (Board Review 01). After reviewing § 87(2)(b)'s license and registration, the officers told § 87(2)(b) that they were conducting an investigation and that they had run his plates and discovered they were not valid. A male officer, identified as PO Fiorenza, then asked § 87(2)(b) to hand over his key. § 87(2)(b) did not want to give the officers the key so he removed the key from the ignition and held it in view of the officers but out of reach. Officers reached inside the vehicle through the front driver's window to get the key from him. When § 87(2)(b) saw that some of the officers were also trying to open his door, he handed over his key. After he gave the officers his key, they opened the door, asked him to get out of the vehicle, and told him that he was being detained because his license plates were fake.

§ 87(2)(b) exited his vehicle and while he was standing at the side of the vehicle, an officer, identified as PO Ezeir, stated that he had marijuana in plain view in the vehicle and held up § 87(2)(b)'s bag of fanto, which is a brown tobacco leaf used for rolling blunts. § 87(2)(b) never actually saw her remove the fanto from his vehicle but knew it had been in his car. § 87(2)(b) stated that there may have been some marijuana leaves in the fanto and that he does smoke marijuana in his car and had smoked in the car about two hours before the officers arrived. § 87(2)(b) stated that no officer mentioned an odor of marijuana and that after PO Ezeir found the fanto, the officers immediately placed § 87(2)(b) in handcuffs. Several officers then searched his car. § 87(2)(b) stated that he gave one of the male officers, identified by the investigation as PO Abdalla, permission to enter the vehicle and look for the title in the glove compartment.

In People v. Rosario, 94 A.D.2d 329 (App. Div. 1983), a valid investigatory stop of a vehicle may be accompanied, as a protective measure, by the opening of any doors and a directive from the police to the occupants to exit the vehicle (Board Review 12).

§ 87(2)(g)

§ 87(2)(g)

In People v. Sanders, 143 A.D.2d 1063 (1988), the court found that contraband located inside a vehicle in plain view gives a police officer the right to conduct a thorough search of the vehicle for additional contraband and the fruits, instrumentalities, or evidence of the crime in question (Board Review 13).

§ 87(2)(g)

**Allegation C—Abuse of Authority: In front of § 87(2)(b) in Brooklyn, Police Officer Desean Mullings threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) stated that a black male officer in uniform grabbed § 87(2)(b) to take him to a patrol vehicle. § 87(2)(b) was mad and kicked the open driver's side door of his vehicle with his foot. § 87(2)(b) stated that he was trying to dent his vehicle because the officers said they were stealing it. The black male officer allegedly told § 87(2)(b) something along the lines of, "If you do that one more time, I'm gonna drop you on your face," or, "If you do that stunt again, you're gonna end up on your face."

PO Abdalla's BWC identifies PO Mullings as the black male officer who assisted in walking § 87(2)(b) to a patrol vehicle (Board Review 04, IA 45, 8:28). Between 9:00-9:11 in PO Abdalla's BWC, PO Mullings is walking with § 87(2)(b) when he kicks his car door, then a male voice states, "Chill out, if you do that again I'm gonna drop you on your face."

PO Mullings was interviewed about this incident (Board Review 09). PO Mullings did not recall if § 87(2)(b) kicked his own car door. PO Mullings denied that he told § 87(2)(b) "If you do that again, I'm going to drop you on your face." He did not hear any other officer or officers make such a statement. Upon watching PO Abdalla's BWC during his interview, PO Mullings recognized himself standing next to § 87(2)(b). PO Mullings denied that he heard the statement, "If you do that one more time, I'm going to drop you on your face" in the video (Board Review 04, 08:27-9:14). PO Mullings was then shown PO Fiorenza's BWC and again denied that he could hear the aforementioned statement (Board Review 03, 9:12 – 9:20).

§ 87(2)(g)

**Allegation D—Abuse of Authority: In front of § 87(2)(b) in Brooklyn, Lieutenant Yael Magori seized § 87(2)(b)'s property.**

After § 87(2)(b)'s arrest, § 87(2)(b)'s vehicle was seized by officers and taken back to the 70<sup>th</sup> Precinct stationhouse. Given that Lieutenant Magori was the supervisor on scene, this allegation has been pled to her.

According to the property vouchers prepared by PO Fiorenza, on April 18<sup>th</sup>, 2019, § 87(2)(b)'s vehicle was vouchered to determine true owner because there was no registration. On May 3<sup>rd</sup>, 2019, the vehicle was released to § 87(2)(b) after he was able to prove ownership (Board Review 14).

NYPD Patrol Guide Procedure 218-19 outlines that a vehicle can be seized following an arrest if the true owner cannot be determined (Board Review 15).

§ 87(2)(g)

**Allegation E—Force: At the 70th Precinct stationhouse, Police Officer Frank Fiorenza used a chokehold against § 87(2)(b)**

§ 87(2)(b) stated that while PO Fiorenza walked him into the main entrance of the 70<sup>th</sup> Precinct stationhouse, § 87(2)(b) pushed against PO Fiorenza in order to enter the front door leading with his right shoulder instead of his left shoulder, which was injured at the time. Directly in front of the stationhouse doors, PO Fiorenza, using one hand, allegedly grabbed the front of § 87(2)(b)'s neck on his trachea.

Surveillance footage from the 70<sup>th</sup> Precinct stationhouse captures § 87(2)(b) PO Fiorenza, and PO Ezeir entering the stationhouse (Board Review 10) and the relevant portions were combined into a separate clip (Board Review 11). This footage shows that PO Fiorenza has his hand on § 87(2)(b)'s arm as they walk through first the exterior door to the stationhouse and to the vestibule door. As PO Fiorenza and § 87(2)(b) begin to go through the vestibule door, § 87(2)(b) moves closer to PO Fiorenza's face. PO Fiorenza places his hand first on the vestibule door, then moves his hand onto § 87(2)(b)'s chest, near the bottom of his neck for approximately one second. PO Fiorenza then places his hand back on the vestibule door and pushes it open all the way. PO Fiorenza and § 87(2)(b) walk through the vestibule door.

PO Ezeir's BWC captures PO Fiorenza walking § 87(2)(b) into the stationhouse (Board Review 05, 18:13-18:20). PO Fiorenza holds onto § 87(2)(b)'s left arm as they enter the exterior stationhouse door. As they approach the vestibule door, § 87(2)(b) moves close to PO Fiorenza's face, moving them away from the vestibule door. § 87(2)(b) then moves against the door, before continuing to walk inside the stationhouse. PO Ezeir can be heard stating, "What are you trying to do right now?" to § 87(2)(b). The angle of PO Ezeir's BWC does not capture PO Fiorenza making any contact with § 87(2)(b)'s chest or neck.

PO Fiorenza BWC is obscured as § 87(2)(b) walks through the stationhouse doors, though PO Ezeir can be heard stating "What are you trying to do?" § 87(2)(b) states, "You just hit me in my neck" (Board Review 03, 18:10 - 18:18).

§ 87(2)(g)

**Civilian and Officer CCRB Histories**

- § 87(2)(b)

- PO Fiorenza has been a member-of-service for four years and has been a subject in one CCRB complaint and one allegation, which was exonerated. PO Fiorenza is also party to one CCRB complaint, 201901383, which is open with the Investigations Division. [REDACTED]  
§ 87(2)(g) [REDACTED]
- Lieutenant Magori has been a member-of-service for 13 years and has been a subject in seven CCRB complaints and 14 allegations, one of which was substantiated.
  - 200810467 involved a substantiated allegation of discourtesy. The Board recommended instructions and the NYPD concurred.
  - Lieutenant Magori is also party to one CCRB complaint, 201902464, which is open with the Investigations Division. § 87(2)(g) [REDACTED]  
[REDACTED]
- PO Mullings has been a member-of-service for four years and has been a subject in two CCRB complaints and five allegations, none of which were substantiated. § 87(2)(g) [REDACTED]  
[REDACTED]

#### Mediation, Civil and Criminal Histories

- § 87(2)(b) [REDACTED] declined to mediate this complaint.
- § 87(2)(b) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- As of October 11<sup>th</sup>, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this complaint (Board Review 18).

Squad No.: \_\_\_\_\_

Investigator:	_____ Signature	_____ Print Title & Name	_____ Date
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Squad Leader:	_____ Signature	_____ Print Title & Name	_____ Date
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Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date
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